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FEDERAL COMMUNICATIONS COMMISSION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	PP Docket No. 93-253
Implementation of Section 309(j))	
of the Communications Act)	
Competitive Bidding)	

**REPLY COMMENTS OF TELOCATOR, THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION**

Telocator, the Personal Communications Industry Association, herewith submits its reply comments in the above-captioned proceeding concerning competitive bidding procedures.¹ As detailed below, the opening comments reflect a consensus favoring open and informed auction processes that ensure the award of licenses to qualified applicants assigning the highest value to the spectrum. In addition, the record before the Commission shows that combinatorial bidding and set-asides for designated entities should not be pursued. The adoption of rules consistent with these principles would best serve Congressional and Commission objectives in implementing competitive bidding for radio spectrum.

¹ Implementation of Section 309(j) of the Communications Act Competitive Bidding, FCC 93-455 (Oct. 12, 1993) ("Notice"). The Commission subsequently extended the reply comment date to November 30, 1993. See Implementation of Section 309(j) of the Communications Act Competitive Bidding, DA 93-1426 (Nov. 23, 1993).

I. SUMMARY

Personal Communications Services ("PCS") hold the key to unlocking the enormous potential of wireless telecommunications for the benefit of our country and its consumers. In this competitive bidding rulemaking, the Commission is attempting to establish the best possible system for simply, efficiently and fairly opening up new spectrum for a diverse range of future services and service providers. The resulting rules will be almost immediately employed for licensing the 120 MHz of PCS spectrum.

In order to assist the Commission in this daunting and vital task, Telocator has developed detailed proposals for ensuring the optimum approach for deploying new Personal Communications Services. The nearly two hundred comments before the Commission reflect broad agreement with Telocator's basic recommendations. This is perhaps not surprising given the association's consensus processes in which nearly all of the prospective PCS bidders participated.

As an initial matter, the opening comments share Telocator's basic view that auction procedures should permit open and informed participation by PCS bidders. In particular, there is strong agreement with the Commission's tentative proposal to rely on oral, sequential bidding as its primary auction tool. However, there is equally strong opposition to any use of combinatorial bidding to override

winning bids for individual service areas by aspiring national system licensees.

In seeking to ensure qualified and diverse participants in bidding for PCS, Telocator agrees with the Commission's general proposal to require upfront payments, generally based upon 2 cents per population per MHz. However, Telocator believes that the proposed set-asides for designated entities unduly restrict opportunities for competitive entry while opening the door for serious potential abuses. Moreover, Telocator must underscore that extension of competitive bidding to intermediate links would be inconsistent with Congressional intent and create incentives for speculation and warehousing.

Finally, Telocator has proffered a competitive bidding plan tailored for 900 MHz narrowband PCS. Specifically, Telocator envisions a process whereby the high bids for each license in the various 900 MHz narrowband PCS spectrum blocks would continually be publicly posted and subject to increased bids until some predetermined period of bidding inactivity occurs. The auctions would begin with simultaneous bidding for all the largest service areas and spectrum blocks and then proceed to the next largest service areas and spectrum blocks until all 900 MHz narrowband PCS licenses are awarded. This system would permit fully informed participation by all prospective providers of advanced messaging services.

II. THE COMMENTS REFLECT CONSENSUS THAT OPEN AND INFORMED BIDDING PROCESSES WOULD ENSURE THE AWARD OF LICENSES TO QUALIFIED APPLICANTS ASSIGNING THE HIGHEST VALUE TO THE SPECTRUM

A. There Is Broad Based Support for Adopting Open, Sequential Bidding Processes

1. Oral bidding is almost unanimously supported by the commenting parties

In its comments, Telocator underscored that oral bidding ensures informed participation by bidders and ensures the issuance of licenses based upon economic value. These basic principles have been broadly embraced by interests cutting across the entire range of PCS industry participants, from new entrants to the largest established carriers.² Accordingly, they should serve as the starting point and foundation for Commission actions in this docket.

Telocator notes that the National Telecommunications Information Administration ("NTIA") has offered a proposal for electronic bidding.³ In such respects, electronic bidding would appear compatible with open and oral bidding concepts. The net result under both systems would be bidding decisions based upon full information about competing bidders

² GTE at 5-6; National Association of Black Owned Broadcasters at pp. 6-7; Paging Network, Inc. ("PageNet") at 10; Southwestern Bell Corporation at 18-19; Telephone and Data Systems, Inc. ("TDS") at 7.

³ NTIA at 16.

and the bids being offered. However, Telocator urges the Commission to take great care in exploring creative or electronic bidding methods to ensure that they do not create risks for the timely and rational licensing of important new PCS services.

**2. There is strong agreement that
sequential bidding should be used
for 2 GHz broadband PCS**

The Commission has allocated different size spectrum blocks and service areas for 2 GHz broadband PCS. Significantly, there are only a limited number of winning bids that can be awarded for each category of the broadband PCS service. Moreover, there is reason to anticipate an intense economic interest by large numbers of bidders in obtaining licenses for such services.

In light of these circumstances, a clear majority of the commenting parties endorse auctioning 2 GHz PCS on a sequential basis moving from largest to smallest spectrum blocks and service areas.⁴ While there are differences among the commenters about the specifics of sequential bidding,

⁴ See, e.g., Alliance for Rural Area Telephone and Cellular Service Providers at 12-13; Alliance Telecom, Inc. at 3; American Personal Communications at 5; Association of Independent Designated Entities at 16; Calcell Wireless, Inc. at 14; Comcast Corporation at 10; GTE at 5-6; PageMart, Inc. at 20-23; PageNet at 17-18; Small Business PCS Association at 5; Telmarc Group at 3; Unique Communications Concepts at 7; Richard L. Vega Group at 4.

there is a common belief that this general approach will enhance informed bidding decisions about the value and availability of spectrum opportunities to meet bidders' business plans. Accordingly, the auction rules adopted by the Commission should be consistent with these consensus views.

**B. Commenters Support Significant Upfront
Deposits To Deter Speculative Bidders**

There is general agreement among commenters that significant upfront deposits are necessary to ensure potential auction participants' seriousness of purpose.⁵ In this regard, many parties support the Notice's proposal to calculate the fee based on two cents per megahertz per pop as a reasonable method of deterring speculative applicants.⁶

⁵ American Wireless Communications at 30-32; AT&T at 33-35; BellSouth at 40-43; Cellular Service at 15-16; CTIA at 30; The Chase McNulty Group at 2; Cook Inlet Region at 46-47; Corporate Technology Partners at 8; First Cellular of Maryland, Inc. at 3; Liberty Cellular at 6; McCaw Cellular at 17-18; MCI at 13; Nextel at 16; Pacific Bell and Nevada Bell at 28-29; PageNet at 35-36; Ray Communications, Inc. at 1; Rochester Telephone at 13; Southwestern Bell at 38-40; Telepoint at 2; Wireless Services at 3-4.

⁶ Alliance of Rural Area Telephone and Cellular Service Providers at 10; Cellular Service at 15-16; Corporate Technology Partners at 8; MCI at 13; Pacific Bell and Nevada Bell at 28-29; Rochester Telephone Corporation at 13; Small Business PCS Association at 4; Southwestern Bell at 38-40; Telepoint at 3. As discussed below, some modification of this formula is necessary for 900 MHz narrowband PCS to ensure that an adequate upfront payment is required.

In addition, commenters agree with Telocator that additional funds bringing the total deposit paid up to 20 percent of the final award amount should be tendered within five business days after the auction.⁷ This allows enough time for interbank transfers of funds. All deposits should be payable in cashier's checks and nonrefundable in the event that a licensee is unqualified or unable to pay.

**III. THE RECORD IN THIS PROCEEDING SHOWS THAT
COMBINATORIAL BIDDING WOULD BE INCONSISTENT
WITH CONGRESSIONAL AND COMMISSION COMPETITIVE
BIDDING GOALS**

**A. The Opening Comments Reflect Overwhelming
Opposition to Combinatorial Bidding**

In the Notice, the Commission invited public comment on allowing the use of national combinatorial bids for the 30 MHz PCS spectrum allocations.⁸ The opening comments reflect extensive opposition to this approach from such diverse interests as new PCS entrants to major established cellular carriers.⁹ The record also shows that combinatorial bidding

⁷ Pacific Telecom Cellular at 7; PacTel Paging at 25; TDS at 21-22.

⁸ Notice at ¶ 120.

⁹ Baraff, Koerner, Olender, & Hochberg at 1-2; BellSouth at 6-11; Quentin L. Breen at 1-3; Comcast at 4-7; Dial Page at 2-3; Geotek at 11; GTE at 6-8; McCaw at 7-14; National Association of Black Owned Broadcasters at 5; Pacific Bell and Nevada Bell at 5-9; PacTel Corp. at 4; PageNet at 18-22; Rural Cellular Association at 9; Rural
(continued...)

would be inconsistent with both Congressional and Commission objectives for auctioning spectrum.

There is strong agreement in the opening comments that combinatorial bidding would undermine the basic Congressional objectives of facilitating new entry opportunities, encouraging new technologies and promoting efficient use of spectrum. Clearly, the reduction of entry opportunities from one hundred and two 30 MHz MTA licenses to just two national licenses would restrict rather than expand diversity of ownership. Similarly, restricting 30 MHz PCS to just two licensees would preclude a multiplicity of service approaches, technologies and visions in favor of two operators likely to result in a commodities type approach to PCS implementation. In addition, as noted by many commenting parties, the sheer size of national service areas and the capital costs of deployment on that scale would inevitably lead to delays in extending service to less populated areas of the country and less efficient use of spectrum.¹⁰

The opening comments also provide compelling evidence that combinatorial bidding will be antithetical to the Commission's own objectives of ensuring administratively

⁹(...continued)
Telephone Company at 1; Southwestern Bell at 22-28; Sprint at 5-6; TDS at 11-13; U.S. Intelco at 11-12.

¹⁰ BellSouth at 10-11, n. 15; Quentin L. Breen at 2-3; Comcast at 6-8; GTE at 8; McCaw at 13; Southwestern Bell at 26-27; TDS at 11-15.

sound rules that are easy to implement and administer. An overarching goal of the Commission in achieving Congressional goals for competitive bidding is to ensure that "any system that we promulgate should be simple and easy to administer."¹¹ Clearly, the superimposing of combinatorial bidding on top of an easily understood and easily administered system of open bidding for MTAs will produce nothing but complications, controversies and uncertainties for all concerned.¹²

In such respects, the opening comments point out the significant detriments inherent in combinatorial bidding. First, the ability of a combinatorial bidder to override the highest bidders for individual MTAs is inherently unfair and runs against the very concept of ensuring informed bidding opportunities.¹³ Second, additional rounds of bidding involving the winning individual bidders for the MTAs and the winning combinatorial bidders would delay and complicate award of licenses.¹⁴ Finally, aspiring PCS service providers

¹¹ Notice at ¶18.

¹² In fact, Telocator believes that some carefully managed system of simultaneous bidding in which bids on each license in a group are continually posted until some predetermined duration of inactivity is preferential to any of the proposed combinatorial bidding schemes.

¹³ McCaw at 1-3; PageNet at 20.

¹⁴ Arch Communications Group at 9-10; McCaw at 7-14; PacTel Paging at 16.

seeking to focus resources and attention on serving local consumer needs within specific MTAs ought not to be forced into bidding for national licenses that they do not want or cannot afford.

B. Various Proposals Are Advanced for Implementing Combinatorial Bidding Systems that Would Limit PCS Entry Opportunities or Produce Complicated and Unwieldy Procedures

In response to the Notice, the Commission has received comments from a limited number of parties supporting combinatorial bidding. Among those few parties advocating this approach, there are several different variations offered. However, all of them contain serious defects.

NYNEX Corporation would allow combinatorial bidders to specify bids equal to the total amount of the winning MTA bids plus an additional percentage payment.¹⁵ This would obviously create certainty that a combinatorial bidder could always outbid the individual MTA bidders. However, its effect is to render the entire MTA bidding process meaningless.

Cellular Telecommunications Industry Association ("CTIA") had been one of the leading critics of national service areas for PCS because of their inhibiting effects on entry opportunities and service to the public. Inexplicably,

¹⁵ NYNEX at 14.

CTIA now offers its own proposal for national combinatorial bidding that would require public disclosure of the winning national license bid before bidding on individual MTAs commences.¹⁶ However, CTIA does not adequately explain how its proposal would allow companies unable or unwilling to participate on a national scale to participate fully and effectively in new PCS opportunities.

Bell Atlantic Personal Communications, Inc. ("Bell Atlantic") offers a different approach involving integrated combinatorial and MTA bidding for both of the 30 MHz spectrum allocations.¹⁷ MCI, for its part, offers a system that would allow the submission and withdrawal of MTA bids by combinatorial bidders.¹⁸ Unfortunately, neither Bell Atlantic or MCI ever explain how or why the complexities of their proposals would result in a "simple and easy" system to implement. Nor do they explain how or why their proposals

¹⁶ CTIA at 16-17.

¹⁷ Bell Atlantic's proposal would allow sealed national bids followed by one open auction for all MTAs. Two winning bidders for each MTA would be named and then the sealed combinatorial bids would be opened. At that point, two national licenses would be awarded if both of the two highest national sealed bids exceeded the sum of the highest MTA bidders for each 30 MHz block; both sets of MTA block winners would be awarded if the two highest national bids were lower than the sum of the second highest MTA spectrum block winners; and, the highest national bidder would be awarded if higher than the total for the second highest 30 MHz MTA spectrum block bids. See Bell Atlantic at 11-12.

¹⁸ MCI at 10-11.

would permit full participation of MTA bidders under conditions allowing for open and informed bidding decisions.

In its Second PCS Report and Order, the Commission declined to establish PCS national service areas for good and sufficient reasons.¹⁹ Now, the Commission is being asked to cobble together national service areas through the device of combinatorial bidding. As illustrated by the opening comments and outlined above, combinatorial bidding should not be pursued given its incompatibility with Congressional and Commission goals in effectuating competitive bidding.

**IV. THE OPENING COMMENTS UNDERSCORE THE NEED FOR
CLEAR DEFINITIONS OF DESIGNATED ENTITIES AND
THEIR BIDDING PREFERENCES**

**A. The Opening Comments Document an Extensive
List of Proposed Definitions of Designated
Entities**

In the Notice, the Commission invited comment on proposed definitions of minority and female owned applicants, small businesses and rural telephone companies.²⁰ Predictably, the outpouring of response reveals attempts to modify and expand the definitions of designated entities in a manner never contemplated by Congress in enacting the Omnibus

¹⁹ Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 93-451, ¶73 (Oct. 22, 1993) ("PCS Second Report and Order").

²⁰ Notice at ¶77.

Budget Reconciliation Act of 1993 ("Budget Act").²¹ The proposals would distort the definitions of designated entities beyond all recognition.

A few examples suffice to illustrate the efforts of numerous commenters to exploit improperly the designated entity preferences. A review of the comments shows proposals that would extend preferred status to handicapped persons, medium sized businesses, persons with ancestry from the country of India and rural telephone companies of all sizes.²² Obviously, to avoid abuses, the Commission should have clear and circumspect definitions tied to Congressional standards and objectives.

B. The Comments Contain Many Requests for Special Forms of Preferences for Designated Entities

A wide variety of aspiring designated entities seek a laundry list of bidding preferences. They cover virtually the full range of possible bidding advantages. For example, commenters suggest set-asides, tax certificates, special

²¹ See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002, 107 Stat. 312, 387.

²² See Devsha Corporation at 3; Economics and Technology, at 1; Tri-State Radio, Inc. at 7.

financial qualification showings, no minimum deposits and installment payments.²³

As discussed below, Telocator believes that preferences for designated entities should be carefully delineated. They should promote opportunities for participation without guaranteeing participation. Something more should be expected of designated entities than the simple act of filing an application.

C. The Comments Confirm that Commission Safeguards and Limitations Are Needed in Determining the Scope and Nature of Designated Entity Preferences

The record shows that the establishment of spectrum set-asides for designated entities goes beyond the mandate of Congress. The Budget Act does not require such a result. Moreover, as the Notice recognizes, the establishment of set-asides presents legal and constitutional questions.²⁴

Similarly, the comments document that Commission policies countenancing anything less than a designated entity's control of an applicant would be a fertile field for abuse. In the broadcasting context, the Commission has

²³ American Wireless Communication Corp. at 23; Cook Inlet Region, Inc. at 30; Lightcom International, Inc. at 2; Luxcel Group, Inc. at 6; Mercury Communications, L.P. at 12; National Association of Minority Telecommunications Executives & Companies at 14; Unique Communications Concepts at 2-3; Valley Management, Inc. at 3.

²⁴ Notice at ¶73.

already had several unfortunate experiences with misuses of preferences. Accordingly, nothing less than a controlling 51% interest in an applicant or consortium should be expected and required for any designated entity preferences to be accorded.

Opening comments demonstrate substantial support for the Rural Telephone Coalition's definition of rural telephone company, with the important qualifications and clarifications offered by Telocator²⁵: that such qualifying rural telephone company, in combination with all parent companies and subsidiaries, provide service by wire to less than 150,000 access lines²⁶; and, that rural telephone companies be treated as a designated entity only when bidding for a license within that local exchange carrier's franchised service area.²⁷

²⁵ Telocator at pp. 10-12.

²⁶ American Personal Communications at 7; Dial Page, Inc. at 5; and McCaw Cellular Communications, Inc. at 19-21.

²⁷ Alliance of Rural Area Telephone and Cellular Service Providers at 3-4; American Personal Communications at 6; American Wireless Communications Corporation at 26; McCaw Cellular Communications, Inc. at 19-21; National Association of Black Owned Broadcasters, Inc. at 15; and National Telephone Cooperative Association at 8.

**V. THERE IS NEARLY UNIVERSAL AGREEMENT THAT
COMPETITIVE BIDDING SHOULD NOT BE APPLIED TO
INTERMEDIATE LINKS USED BY LICENSEES**

The opening comments almost unanimously support Telocator's reading of the Budget Act as completely excluding intermediate links used by mobile service providers from competitive bidding.²⁸ The only discordant note comes from CTIA in its endorsement, without any meaningful elaboration, of the Notice's proposal to auction such licenses.²⁹

In response, Telocator wishes to underscore that representatives of virtually every type of intermediate link licensee have shown that such licenses do not typically involve mutually exclusive applications and that they are analogous to spectrum used for internal business needs, exempt from competitive bidding authority under the legislation. Indeed, Congressman Dingell has himself recognized that subjecting intermediate link licenses to auctions would be inappropriate as Congress intended to

²⁸ Alcatel Network Systems at 2-3; APC at 8-9; Ameritech at 3; AT&T at 20-23; BellSouth at 45; California Microwave at 3-7; Comcast at 14-15; Cox at 8; GTE at 3-4; General Communications at 14; McCaw at 22-23; MCI at 22; National Rural Telecom at 13; NTCA at 16; OPASTCO at 11; Pacific Bell and Nevada Bell at 18-19; PacTel Corp. at 9-10; PacTel Paging at 17; Point Communications at 5; Rural Cellular Association at 3-4; Small Telephone Companies of Louisiana at 3-4; Southwestern Bell at 6-11; Sprint at 22; TDS at 4; Telocator at 18; Time Warner at 6-9; USTA at 2; U.S. Intelco Networks at 5-7; UTC at 7-8; and Richard L. Vega Group at 3.

²⁹ CTIA at 31.

"distinguish between those who subscribe to spectrum-based services and others whose use of the spectrum is incidental to some other service."³⁰

In essence, the statutory text "requires that subscribers operate a transmitter themselves" for auctions to apply.³¹ Furthermore, the net effect of extending competitive bidding to intermediate links would be the creation of pernicious incentives to warehouse or file strike applications -- a development diserving the interests of the entire industry as well as the Commission. For these reasons, the Commission should abandon its proposal to auction intermediate link licenses.

VI. THE RECORD IN THIS PROCEEDING SUPPORTS TELOCATOR'S PROPOSALS FOR THE AUCTIONING OF 900 MHz NARROWBAND PCS LICENSES

In its opening comments, Telocator stressed the importance of tailoring competitive bidding procedures to specific services. Thus, while Telocator recommended sequential ascending bidding as the Commission's basic auction method, it recognized that these procedures would be an inefficient means of awarding the large number of

³⁰ Letter from John D. Dingell, Chairman, U.S. House of Representatives Committee on Energy and Commerce to the Honorable James H. Quello, Acting Chairman, FCC (Nov. 15, 1993).

³¹ Id.

homogeneous licenses available in the 900 MHz PCS frequency blocks. Telocator therefore advocated the use of simultaneous open bidding for similarly-sized licenses in narrowband PCS as a way of speeding the process while ensuring that generally uniform prices are paid by all future competitors in various sized spectrum blocks.

Specifically, Telocator envisions a process whereby the high bids on each license in a group would continually be posted with bidding to close after some predetermined duration of inactivity, such as one-half hour. Telocator and its members believe that all nationwide licenses should be auctioned first, followed by the MTAs in descending order of population, and the licenses within each MTA auctioned in descending order of spectrum amount.³² For example, after the nationwide licenses, the New York MTA would be auctioned. Within the New York MTA, the four 50 kHz pairs would be auctioned, followed by the seven 50 kHz/12.5 kHz pairs, followed by the two 50 kHz unpaired channels and finally, the 12.5 kHz unpaired channel. Competitive bidding would then commence on the 50 kHz pairs in the Los Angeles MTA, and so on. After all the MTAs had been assigned, auctioning of the BTAs within the New York MTA (the first auctioned MTA) would begin, again in descending order of population and spectrum amount.

³² See PacTel Paging at 12-13 & n.27; PageNet at 44.

As demonstrated by the above, the filing of a separate application for each license to be bid on would be unduly burdensome and wasteful. Telocator thus recommends a simplification of the qualifications procedures to permit prospective auction participants to file a single postcard.

Due to the small amounts of spectrum to be assigned, Telocator supports a more substantial upfront payment for narrowband PCS auctions than the formula outlined in the Notice. An initial upfront fee of no less than \$25,000 for all licenses, except the 12.5 kHz unpaired talk back channels, would better serve the purpose of discouraging speculative bidders.³³ For the 12.5 kHz unpaired licenses, Telocator recommends a standardized upfront fee of \$2,500.

For the same reasons, Telocator joins other commenters in recommending that bidders be required to tender a cashier's check in the amount of the upfront fee in advance of the auction.³⁴ Such a fee is far from prohibitive and evidences a real commitment by serious and qualified bidders to participate in the auction. By adopting these procedures for the licensing of 900 MHz narrowband PCS, the Commission will ensure the rapid deployment of this important new family of services.

³³ PageNet at 40.

³⁴ See, e.g., PacTel Paging at 23; PageNet at 35, 40 & n. 66.

**VII. THE COMMENTS REFLECT CONSENSUS THAT THE
COMMISSION MUST CONTINUE TO MINIMIZE MUTUAL
EXCLUSIVITY FOR EXISTING SERVICES AND RESOLVE
SUCH SITUATIONS EXPEDITIOUSLY**

As Telocator noted in its opening comments, the advent of competitive bidding would not appear to significantly impact the licensing of existing land mobile services as mutual exclusivity is rare in such circumstances. In this regard, Telocator and other parties remind the Commission of its statutory obligation "to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means to avoid mutual exclusivity in application and licensing proceedings."³⁵ Given the limited number of cases where mutual exclusivity will result in existing land mobile services and the limited number of potential bidders likely to be involved, Telocator urges the Commission to adopt a simplified auction process to resolve such situations expeditiously.

VIII. CONCLUSION

As detailed herein, the comments reflect consensus that open and informed bidding provides a uniform, comprehensible auction process that allows participants to make rational decisions. There is also general agreement that the

³⁵ Budget Act § 6002(a)(6)(E), 107 Stat. at 390; see also GTE at 4; McCaw at 28; PacTel at 9; TDS at 4-5; Telocator at 22.

Commission's combinatorial bidding proposal should be abandoned to avoid introducing needless complexity and undermining basic Congressional objectives. In addition, the comments underscore the importance of implementing strict safeguards and limitations for designated entity preferences and excluding intermediate links entirely from auctions. Finally, Telocator reiterates that the special features of 900 MHz narrowband PCS call for an adaptation of the Commission's basic auction scheme.

Respectfully submitted,

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